

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 2004, by and between The City of Seattle (the “City”), and Lorig Associates, LLC (“Lorig”).

Recitals

- A. This Agreement involves property known as the Northgate South Lot. The Northgate South Lot is subject to requirements set forth in the Northgate Mall Development Agreement (“Development Agreement”) (attached hereto as Exhibit A and entered into pursuant to the authority of RCW 36.70B.170 *et seq.* and Seattle Ordinance 121358) between the City and Simon Property Group, L.P. (“Simon”). The Development Agreement addresses two particular parcels of the Northgate South Lot, Parcels A and B. Legal descriptions for Parcel A and B are attached as Exhibit B.
- B. Lorig is a developer who desires to develop a portion of the Northgate South Lot (“Parcel A”) which is approximately 5.9 acres in size. Lorig and Stellar Lone Star, LLC (“Stellar”) have entered into a Purchase and Sale Agreement (the “Purchase Agreement”) with Northgate Mall Partnership pursuant to which Lorig and Stellar have the option to acquire Parcel A provided certain conditions are satisfied including, without limitation, the issuance by the City of Seattle in its regulatory capacity of a Master Use Permit for a mixed use development with conditions and configurations satisfactory to Lorig (“MUP”). The Development Agreement limits the types of development and uses that may occur on Parcels A and B. The Development Agreement requires that any development on Parcel A include a minimum of 150 dwelling units and that any nonresidential uses be supportive of transit oriented development. (See Section 6.3 of Development Agreement). Lorig’s development is proposed to be a mixture of commercial, office and residential uses that complies with the requirements of the Development Agreement.
- C. In a December 5, 2003 letter from Bruce Lorig to the Seattle City Council, Lorig committed to constructing a minimum of 300 housing units available to a range of income levels in its development of the Northgate South Lot. Lorig also agreed to consider cost-effective solutions for sustainable design and construction techniques and to seek input and advice from the Northgate Stakeholders Group. These commitments are in addition to the Northgate Mall Development Agreement requirements that apply to Parcels A and B.
- D. Pursuant to a separate agreement between Lorig and Stellar, Lorig will serve as the development manager for their project and Stellar shall serve as its financial partner. Lorig executes this Agreement in its capacity as development manager for the project.

- E. Pursuant to the Development Agreement, the City has an option to purchase a portion of the Northgate South Lot immediately to the east of Parcel A ("Parcel B"). Parcel B is approximately 2.7 acres in size.
- F. If the City exercises its option to purchase Parcel B, the Development Agreement requires the City to use Parcel B (or an equivalent amount of square footage within the Northgate Overlay District (SMC 23.71.004)) as open space and/ stormwater improvements, which may be natural systems drainage projects or other stormwater improvements to benefit Thornton Creek. (See Section 7.1 of the Development Agreement).
- G. The City has decided to exercise its option to purchase Parcel B. The City intends to develop a stormwater drainage improvement (the "Hybrid Alternative") that meets the requirements of the Development Agreement and has the support of Lorig and the Northgate stakeholders.
- H. Lorig is in the preliminary stages of site planning and design for the mixed use development to be described in the MUP application. Provided Lorig elects to proceed with its acquisition of Parcel A and all other conditions and obligations of this Agreement are satisfied, the City and Lorig are willing to agree to a short plat of Parcel A and Parcel B and to transfer ownership of the portion of Parcel A necessary to construct the Hybrid Alternative to the City in exchange for an equivalent amount of Parcel B being transferred to Lorig. Except as otherwise reconfigured in the development approval process, after the short plat, the reconfigured parcels will be substantially as set forth in Exhibit C, with Lorig owning Parcels 1 and 3, and the City owning Parcel 2.
- I. Lorig has agreed to assume responsibility for the operation and maintenance of a portion of the landscape planned for a portion of the reconfigured land (Parcel 2) located adjacent to the boundary between Parcel 2 and Parcels 1 and 3. The details of such responsibility including area of responsibility and type of maintenance, frequency and methods will be subject to a future contractual agreement of the parties as contemplated in Section 4(a)(ix) below.

Agreement

1. Short Plat Application. The parties agree to apply for approval of the short plat generally described on Exhibit C (the "Short Plat"). The parties understand and agree that variations to the Short Plat including without limitation the parcel lot lines depicted in Exhibit C may be made to accommodate the designs for Lorig's development and the City's stormwater improvements as they are developed further, provided that in no event will the overall size of Parcel 2 be less than the size of Parcel B. The parties understand that this size restriction is necessary so that the City can meet its obligations under Section 7.1 of the Development Agreement.

2. Submission of Short Plat Application. The parties intend that the Short Plat application be processed contemporaneously with the City's Department of Planning and Development ("DPD") processing of the Master Use Permit application submitted by Lorig for Parcels 1 and 3 of the Short Plat. The parties intend that the Short Plat not be recorded or otherwise effective until the conditions precedent set forth in Section 4 are met. Notwithstanding the delayed effective date, the parties agree that, to facilitate Lorig's securing financing of its proposed development and to minimize delay, it is in the parties' best interests to apply for the Short Plat at an early stage.
3. Timing. The parties agree to request DPD to process the parties' Short Plat application, but not to record the approved Short Plat until mutually requested in writing by the parties. If necessary, the parties agree to waive any requirements that DPD process the Short Plat application within statutory-required timeframes and to consider any other requirements that DPD imposes on the parties' request to not record the approved Short Plat. If DPD agrees to the parties' request, the parties shall apply for the Short Plat in conjunction with Lorig's application for MUP approval. In the event that DPD denies the parties' request, or DPD places conditions on the request that are unacceptable to either party, the parties agree to apply for the Short Plat at such later date as may be acceptable to Lorig and the City but in any event no later than is necessary to obtain approval of such Short Plat (with all appeal periods run and any appeals resolved satisfactorily) on or before the date that the parties reasonably agree that the conditions precedent set forth in Section 4 will be satisfied. In any event, the parties shall not deliver the final mylar to DPD until both agree that the Section 4 conditions have been satisfied.
4. Conditions precedent to the obligation to record approved Short Plat. Prior to recording the Short Plat, the City and Lorig shall have reached agreement on the matters described in this Section 4 and all other conditions listed in this Section 4 below shall have been satisfied. As used in this Section 4, the term "Parcels" shall mean Parcels 1, 2 and 3 of the Short Plat. Neither party shall be obligated to allow the final Short Plat to be recorded before each of the issues and conditions listed below are resolved or met to its satisfaction.
 - a. The parties have a written agreement (which may be in the form of a letter):
 - i. Upon the grade elevations at the boundary lines of the Parcels;
 - ii. Upon the set back requirements for the Parcels;
 - iii. Upon the location, purpose and number of easements for the Parcels;
 - iv. Upon a schedule for the timely development of the Parcels and the remedies if such development schedule is not satisfied;
 - v. Upon the provision, location and number of pedestrian connections between the Parcels;
 - vi. Upon the location of vehicle access to the Parcels;

- vii. Upon those design issues which overlap the parties' developments on the Parcels;
 - viii. Upon any enhancements that Lorig is interested in pursuing on Parcel 2;
 - ix. Upon the respective responsibilities for landscaping operation and maintenance on Parcel 2 including any agreement by Lorig to maintain and operate the landscaping on Parcel 2 which is located adjacent to the boundaries between Parcel 2 and Parcels 1 and 3;
 - x. Regarding the coordination of construction activities on Parcels 1, 2 and 3 of the Short Plat. Such agreement shall include construction sequencing and staging and the granting of such temporary construction easements over such parcels as may be needed for development of the respective parcels.
 - b. The City shall have obtained title to Parcel B;
 - c. The City shall have approved and appropriated the necessary funds to construct the Hybrid Alternative;
 - d. Lorig shall have obtained a valid MUP that is no longer subject to any appeals (or any appeals that have been filed have been resolved to the satisfaction of parties);
 - e. Lorig shall have provided a copy of a Level One environmental review of Parcel A to the City, and the City shall have determined that nothing in such review will cause construction of the Hybrid Alternative to exceed the funds appropriated for the project or otherwise make the project infeasible;
 - f. The City shall have provided a copy of a Level One environmental review of Parcel B to Lorig, and Lorig shall have determined that nothing in such review will cause construction of its proposed development to exceed the funds budgeted for its development or otherwise make its development infeasible; and
 - g. Lorig (or a Permitted Assignee as that term is defined in the Purchase Agreement) shall have obtained title to Parcel A.
5. Notwithstanding any other provision of this Agreement to the contrary, either party shall have the right to terminate this Agreement at any time if Lorig elects not to proceed with its acquisition of Parcel A or if either party reasonably believes that the Short Plat will not be recorded by December 31, 2006 or such later date as mutually agreed to by the parties; such termination shall be without liability of any kind to the other party.
6. Continuation of Development Agreement obligations. The parties agree to comply with the use restrictions of the Development Agreement on the reconfigured parcels created by the approved Short Plat subject to such amendments to such agreement as may be approved by Simon, Lorig and the City. Without limiting the generality of the foregoing, Lorig agrees to construct a minimum of 150 dwelling units on Parcel 1 and to restrict use of Parcel 3 to uses that support transit oriented development as defined in Section 6.3 of the Development Agreement. Similarly, the City agrees to construct stormwater and/or open space improvements on Parcel 2.

7. No building restriction. The City agrees to not build any buildings other than drainage facilities on Parcel 2.
8. Assignment of Agreement. Neither Lorig nor the City shall have the right to assign their rights under this Agreement prior to the recording of the final Short Plat and the date the parties have reached agreement on the matters listed in Section 4 above.
9. Representations of the City. The City makes the following representations to Lorig:
 - a. The City will construct the Hybrid Alternative in accordance with the public works laws of the state of Washington.
 - b. The City is acting strictly in its proprietary capacity and not in any regulatory capacity.
10. Covenants of Lorig. Lorig covenants and agrees as follows:
 - a. Lorig recognizes that in entering into this Agreement, the City is acting in its proprietary capacity and not in its regulatory capacity, and that the City is not making any representation as to how any City regulatory agency will respond to any aspect of this Agreement.
 - b. Lorig will meet with the Seattle-King County Building Trades Council to explore approaches which further the goal of providing livable wage employment in association with the construction of its development.
11. Addresses for Notices.. All notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to the City: Seattle Public Utilities
Seattle Municipal Tower, Suite 4900
700 Fifth Avenue
P.O. Box 34018
Seattle, WA 98124-4018

Attn: Chuck Clarke, Director

Telephone: (206) 684-5851
Fax: (206) 684-4631

If to Lorig:

Lorig Associates
420 Market Place Tower
2025 First Avenue
Seattle, WA 98121

Attn: Bruce Lorig

Telephone (206) 728-7660

Fax (206) 728-5847

12. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
13. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
14. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
15. Captions: The titles of sections are for convenience only and do not define or limit the contents.
16. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.
17. Entire Agreement: This Memorandum of Understanding, along with any exhibits and attachments, constitutes the entire agreement between the parties concerning the matters expressly set forth herein. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of Lorig prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
18. Negotiated Agreement: The parties acknowledge that this agreement is the result of negotiations between the parties, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

PROPOSED NORTHGATE LEGISLATION
Site Coordination Agreement with Lorig Associates
Attachment A to Proposed Ordinance - Memo of Understanding
June 17, 2004

THE CITY OF SEATTLE

LORIG ASSOCIATES, LLC

By _____
Chuck Clarke, Director
Seattle Public Utilities

By _____
(Name, title)

Date: _____

Date _____